

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 90-571
Telecommunications Relay Services and)	
Speech-to-Speech Services for)	CC Docket No. 98-67
Individuals with Hearing and Speech Disabilities)	
)	GC Docket No. 03-123

**COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

On June 30, 2004, the Federal Communications Commission (FCC) released a Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceedings inviting public input on, among other things, the appropriate method regarding how to reimburse telecommunications relay service (TRS) providers for calls utilizing Internet protocol (IP). The FCC also requests comments on how to determine by jurisdiction, for compensation purposes, the location of the party to an IP relay call who is using the Internet to communicate with the communications assistant. The FCC is requesting recommendations on this matter to ensure that the intrastate and interstate jurisdictions are funding adequately their respective portions of the IP calls to TRS providers. The FCC also invites public input concerning when to assign cost recovery to the states for video relay service (VRS).

The Public Utilities Commission of Ohio (PUCO or Ohio Commission) hereby submits its comments responding to the FCC's June 30, 2004 FNPRM. Comments in this proceeding are due at the FCC on October 18, 2004.

BACKGROUND

Section 225 of the Americans with Disabilities Act (ADA) requires the FCC to ensure that TRS is available "to the extent possible and in the most efficient manner" to persons with hearing or speech disabilities in the United States. Section 225 of the ADA, also distinguishes between intrastate and interstate TRS services and is reflected by the arrangement whereby states are responsible for the reimbursement of the costs of intrastate TRS and the interstate TRS Fund is responsible for the reimbursement of the costs of interstate TRS. The FCC believes that Title IV of the ADA and its legislative history make plain that Congress intended that the states be responsible for the cost recovery for intrastate relay services provided under their jurisdiction. The FCC observes that there are technical difficulties in determining the location of the party to an IP Relay call who is using the Internet to communicate with the communications assistant (CA) for purposes of determining whether an IP relay is intrastate or interstate. The public switched telephone network (PSTN) has the automatic number identification (ANI), which allows the automatic determination of each caller's location in a traditional TRS call. FNPRM at ¶ 5. The Internet has no equivalent.

DISCUSSION

Jurisdictional Issues and Cost Assignment

The FCC requests comment on whether it should attempt to devise a method for allocating calls as intrastate or interstate. In addition, the FCC seeks comment on whether section 225 requires the Commission to develop a method for allocating IP Relay costs between the interstate TRS Fund and among the states, and, if so, on what methods exist or could be developed to determine the location of an IP Relay caller. FNPRM at ¶¶ 28 and 222. The FCC also seeks comment on whether, as an alternative to adopting a mechanism by which IP Relay calls might be identified as either interstate or intrastate for purposes of cost reimbursement under section 225, such calls should be deemed inherently interstate and, if so, under what rationale such a conclusion could be based. The FCC questions whether such a conclusion would be consistent with the TRS scheme as intended by Congress. FNPRM at ¶ 229.

The Ohio Commission submits that the FCC's tentative conclusion regarding state funding of IP TRS calls is premature and possibly unsubstantiated. Prior to determining which jurisdiction is responsible for the funding of IP-related TRS calling the FCC must first resolve all of the jurisdictional issues upon which it has requested comment IP Enabled Services proceeding (WC Docket No. 04-36). The Ohio Commission contends that the outstanding jurisdictional issues regarding Voice over the Internet Protocol (VoIP) services must be resolved first prior to determining any responsibility for the funding of IP TRS calling. The Ohio Commission recognizes that IP TRS calling differs from VoIP calling since the caller accesses the TRS via a PC over a

dialup Internet service provider (ISP), cable modem, or digital subscriber line (DSL) service. The Ohio Commission, nonetheless, believes that the regulatory framework developed governing IP relay calling and VoIP should be developed together, to the extent that both utilize the PSTN to originate or terminate calls. Any FCC jurisdictional ruling regarding IP TRS calling must be consistent with the FCC's VoIP decision. The issue of IP TRS calling should therefore be consolidated with the FCC's VoIP proceeding (WC 04-36).

The Ohio Commission believes that if the FCC declares IP calling interstate subject to the exclusive jurisdiction of the Federal government, then IP calls to and from the TRS must be recovered solely from the Interstate jurisdiction. If the FCC blurs the clear distinction between jurisdictions, it also must be responsible for the cost of all IP calls to the relay. This interpretation is consistent with section 225. Regardless as to where an IP TRS call originates or terminates, if the service is subject only to the FCC's interstate jurisdiction then that jurisdiction should bear responsibility for the cost of the call. If the FCC asserts exclusive jurisdiction over IP Internet calling, a call to (or from) the PSTN to the Internet would be no different than a call from the PSTN to the interstate interexchange network. Under section 225, therefore, States cannot be expected to share in the cost of calls that are not subject to their jurisdiction.

As noted in our 04-36 comments, the FCC must be mindful of a state's obligation to fund its intrastate TRS programs to the communicatively disabled. It would be grossly inequitable for the FCC to claim exclusive jurisdiction over IP services in one investigation and to require intrastate funding for the same

services in another unrelated investigation. Such a contrast of decisions would leave the states with no means or jurisdictional authority to render assessments to IP services cost causers while simultaneously requiring states to fund that same usage. States must have the discretion to render assessments for TRS to VoIP telecommunication providers that interconnect to the PSTN to the extent they provide services that originate and terminate within the state boundaries. For these reasons, among others, the FCC must maintain an unambiguous line of demarcation between the intrastate and federal jurisdiction concerning the regulation of IP services.

The Ohio Commission's comments to the FCC in its 04-36 proceeding also recommended that VoIP calls should be considered telecommunications service subject to both State and Federal requirements if the service meets the following four-part test: (1) the provider offers fee-based voice telephony to the mass market; (2) the service transmits information of the user's choosing by originating or terminating calls over the PSTN; (3) the information is received without a net change in form or content; and (4) the NANP is used to route the calls.

When this four-part test is realized, the IP service should be classified as telecommunications subject to identical basic obligations as traditional providers including the following: universal service programs funding; access to and funding for telecommunications relay service (TRS); reciprocal compensation; access charges subject to individual jurisdictional requirements; number porting, telephone number conservation measures, E9-1-1; Communications Assistance Law Enforcement Act (CALEA) requirements; basic public safety requirements;

and limited consumer and service quality obligations. In addition, the Ohio Commission's comments indicated that the FCC should not pre-empt state commission authority over intrastate VoIP services that are properly considered "telecommunications services" under the 1996 Act.

The FCC requests comment on how to accurately assign calls to the intrastate jurisdiction. The FCC proposes two separate approaches: (1) a Federal/State allocator which would apportion by usage studies a certain percentage of calls to each jurisdiction, or (2) requiring IP TRS callers to presubscribe to a particular TRS service so that the relay center can assign the call to the proper jurisdiction. The FCC observes that implementation of any new compensation recovery scheme for IP Relay will take time and that state TRS programs will need some time to plan for their assumption of the costs of the intrastate service. FNPRM at ¶ 230.

Again, the PUCO maintains that the FCC's proposals in this regard are untimely. The FCC cannot begin to assign usage and corresponding costs until the jurisdictional framework is established. If regulatory authority is afforded to the states, once the jurisdictional matters are determined, then the FCC and the states should work together to develop methods of funding for TRS calls from the Internet. These costs were likely not contemplated by Congress when drafting the ADA. As the FCC is aware from its universal service and access reform investigations, to whom and at what levels these contributions should be rendered are not simple questions. The FCC and the states must work to ensure that the bulk of the funding burden for public programs such as TRS and

universal service do not fall upon only traditional providers of telecommunications services such as local exchange carriers (LECs), inter exchange carriers (IXCs), and commercial mobile service (CMRS) providers. The FCC must ensure that all providers that interconnect with the PSTN are rendered nondiscriminatory assessments for the funding of these services, regardless of the regulatory classification (e.g., CMRS, VoIP, CLEC, IXC, ILEC, or cable modem). Then the FCC should proceed with an inquiry to determine how best to share in TRS IP calling the costs.

IP Provider of Choice

The FCC notes that consumers may choose among IP Relay providers. The FCC questions whether the states may be unwilling or unable to meet this requirement. FNPRM at ¶¶ 51 and 221.

If the FCC determines in its 04-36 proceeding that IP services are subject to both the interstate and intrastate jurisdictions, the Ohio Commission would need all intrastate IP calling subject to the state's jurisdiction to be directed to Ohio registered TRS providers. Ohio's TRS providers are compensated through a State of Ohio corporate franchise tax credit. There would be no funding available to any provider that does not have a formal presence in Ohio. For example, if an intrastate IP TRS call was to be routed through a vendor outside of Ohio's boundaries that was not subject to the Ohio's corporate franchise tax, no credit could be applied to the vendor's taxes to ensure compensation. Likewise, a similar situation is presented if the TRS provider is located within the state's boundaries, but does not have a corporate sales tax obligation that equals or

exceeds the credit necessary to ensure full compensation.

The FCC should also avoid requiring an intrastate IP carrier of choice for two additional reasons--price and service quality. As is the case for most (if not all) intrastate relay programs states' TRS vendors are chosen through a competitive bid process. This bidding process results in the selection of the highest-quality TRS provider at the lowest possible price. Currently, Ohio's rate for traditional TRS is significantly lower than that set by the FCC. If the FCC were to require intrastate carrier of choice for IP TRS services and the rates for service are established by either the vendor or the FCC, it would be necessary for the States to furnish funding for service that could exceed our compensation rates for intrastate TRS. Since the Ohio Commission enters into a five-year contract with its TRS vendor, certain specific service quality measures must be maintained, some of which exceed the FCC's. If the FCC were to require carrier of choice IP TRS, the service quality assurances may be rendered unenforceable. Finally, the Ohio Commission notes that since TRS IP calling is not a mandated service, it should be at the individual state's discretion as to whether this service is offered on an intrastate basis until the jurisdictional and funding issues are comprehensively resolved.

Video Relay Service (VRS)

The FCC FNPRM notes that it has made clear that the current arrangement of compensating VRS providers from the interstate TRS Fund for all VRS calls (i.e., both interstate and intrastate) is temporary. Therefore, the FCC seeks comment on what mechanism might be adopted to satisfy the statutory requirement that "costs caused by interstate TRS shall be recovered from all

subscribers for every interstate service and costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction.” The FCC also seeks comment on whether the provision of VRS has sufficiently developed such that it should be included as a mandatory form of TRS. NPRM at ¶ 24.

The Ohio Commission maintains that intrastate VRS should be provided at the discretion of the individual states. Similar to our proposal regarding IP TRS services, VRS should not be made mandatory until the FCC and the States can work together to develop a comprehensive funding mechanism that takes into consideration TRS calling that transcends traditional mediums. Regardless as to whether the service is a mandatory form of TRS, States should have the discretion to require all intrastate calls to be directed to the state-approved TRS vendor to ensure the optimal combination of service quality and cost.

CONCLUSION

The Ohio Commission thanks the FCC for the opportunity to file comments in this proceeding.

Respectfully submitted,

Public Utilities Commission of Ohio

By its Attorneys:

Jim Petro

Attorney General of Ohio

Duane Luckey

Senior Deputy

____s/Matthew J. Satterwhite_____

Matthew J. Satterwhite

Assistant Attorney General

Public Utilities Section

180 East Broad Street

Columbus, Ohio 43215-3793

(614) 466-4396

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